

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEEWARD CONSTRUCTION COMPANY,
LTD.,

Case No. 1:12-CV-06280-LAK/GWG
(ECF CASE)

Petitioner,

v.

Honorable Lewis A. Kaplan
United States District Judge

AMERICAN UNIVERSITY OF ANTIGUA –
COLLEGE OF MEDICINE and MANIPAL
EDUCATION AMERICAS, LLC f/k/a GCLR,
LLC,

**REPLY DECLARATION
OF LEONARD SCLAFANI**

Respondents.

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Leonard Sclafani, hereby affirms under penalty of perjury as follows:

1. I am an attorney duly admitted to practice law in the State of New York and in this Court. I am the Senior Vice President and General Counsel of Manipal Education Americas, LLC, agent for American University of Antigua, Inc. and its College of Medicine (“AUA”), and, unless otherwise stated, I am fully familiar with all of the facts and circumstances set forth herein.

2. I submit this reply declaration in further support of AUA’s cross-motion to dismiss this matter on forum non conveniens grounds, or in the alternative, to vacate or modify the arbitration award.

Overview of AUA and MEA

3. Leeward disingenuously attempts to connect MEA to the underlying dispute, while at the same time, misleading the Court as to AUA's alleged connection to the State of New York.

4. AUA was incorporated and organized on October 10, 2003 under the Companies Act 1995 of Antigua and Barbuda. A true and correct copy of AUA's Certificate of Incorporation is attached hereto as Exhibit A.

5. Pursuant to an Agreement and Charter with the Ministry of Health, Sports and Youth Affairs of Antigua and Barbuda, AUA operates an institution of higher learning that confers graduate degrees of medicine. AUA's business offices and place of business are situated in its seventeen acre campus located at Jabberwock Road and High Point Dock Rd., St. John's, Antigua, and its registered agent is located at Roberts & Co., 60 Nevis Street, St. John's, Antigua. AUA's only offices are located in Antigua, and it is not authorized to do business anywhere in the United States.

6. Since December 2006, AUA has been wholly owned by Manipal Education Americas, LLC f/k/a GCLR, LLC ("MEA"). MEA is a New York limited liability company that was organized in December 2006. MEA, among other things, is in the business of providing back-office services to universities, including AUA. The Board of Managers of MEA is controlled by individuals who are residents of India.

7. MEA is a wholly owned subsidiary of Manipal Education (Mauritius) Pvt. Ltd. ("Manipal Education"), which is a corporation established in Mauritius. Manipal Education is the corporate owner of various medical schools and other institutions located throughout the

Eastern Hemisphere, including Manipal University, the largest privately owned university in India. Manipal Education does not have an office nor does it do business in the United States.

AUA Has Substantial Assets and Contacts in Antigua

8. Without any factual support, Leeward alleges that AUA is likely a shell company and that Leeward brought this action in New York because this is where AUA's assets are located. In making these unsupported claims, Leeward entirely ignores the fact that AUA is located in Antigua, where it has not only an approximately US \$35 million campus facility, but substantial and permanent contacts and assets.

9. From its inception in 2004, AUA operated out of leased facilities in Antigua. In September 2008, AUA entered into a contract with Leeward to build a permanent campus in Antigua, and in furtherance of that contract, AUA has already paid Leeward in excess of EC\$23,000,000 for the construction of this facility. As noted previously, MEA is not now, nor has it ever been, a party to this Agreement. A photograph of AUA's campus in Antigua is annexed as Exhibit B.

10. In addition to AUA's main campus in Antigua, it owns and/or leases approximately twenty different parcels of student and faculty housing in Antigua. AUA does not own or lease premises anywhere other than in Antigua.

11. As of the date hereof, AUA employs approximately 115 administrative staff and 66 faculty members in Antigua. All of these individuals reside on the island of Antigua. The 66 faculty members teach in Antigua 1,248 AUA students who come from 24 different countries. AUA does not have any employees in the United States.

12. To operate the school in Antigua, AUA maintains 5 separate bank accounts in Antigua. Not only is AUA one of the largest employers in Antigua, but the ripple effect of its students and staff has a profound economic effect upon the economy of Antigua.

MEA Serves as AUA's Agent at Arms-Length for Certain Administrative Services

13. AUA was originally conceived to provide education in health science fields for deserving students from North America, India and the Caribbean. Part of AUA's unique program is its twinning program with Kasturba Medical College, which is located in Mangalore, India. This twinning program allows students to attend classes in either Antigua or India.

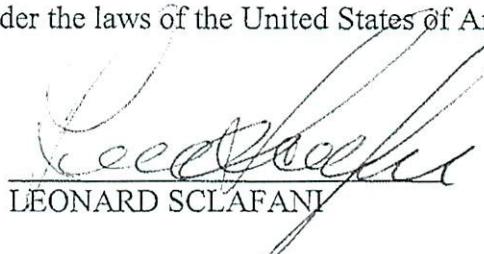
14. In January 2006, AUA entered into a written agreement with MEA pursuant to which MEA committed to perform certain back-office administrative services consisting of among other things, admissions, financial aid and accounting.

15. In determining the fair consideration to be paid to MEA for the services that were to be rendered, AUA retained the services of the international accounting firm, Ernst & Young, to do a transfer pricing study so as to make sure that any agreement that was entered into between AUA and MEA was at arms-length and for fair consideration. This study was performed by Ernst & Young, and subsequent thereto, MEA has performed these services in accordance with the written agreement and consistent with the Ernst & Young transfer pricing study. Each of these administrative services is performed by employees of MEA.

16. Both AUA and MEA are separately capitalized with separate sets of books, and all corporate and limited liability company formalities are always observed. Leeward offers no evidence to the contrary.

17. In light of the above, it is clear that the real purpose of Leeward's arguments is not any belief that the Court will hold MEA liable for AUA's debts, but rather a transparent attempt to convince the court that there is a New York nexus to this dispute. There is not.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


LEONARD SCLAFANI

Dated: November 15 2012

EXHIBIT A

FORM 1

ANTIGUA AND BARBUDA

THE COMPANIES ACT, 1995

No. 18 of 1995
[Section 5(1)]

ARTICLES OF INCORPORATION

1. Name of Company: AMERICAN UNIVERSITY OF ANTIGUA INC

2. Company No:

3. The classes and any maximum number of shares that the Company is authorized to issue:
50,000 common shares

4. Restriction if any on share transfers: None

5. Number (or minimum and maximum number) of Directors: minimum number of
directors is 3 and maximum number of directors is 9.

6. Restrictions if any on business the company may carry on: None

7. Other provisions if any: None

8. Incorporator:

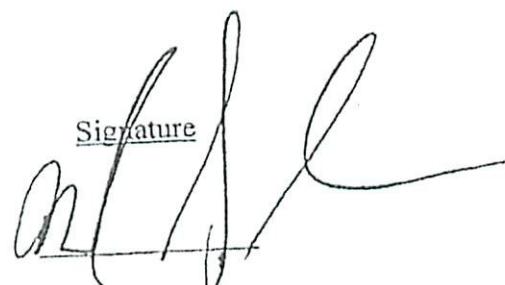
The name and address of the Company's incorporator is:

Name

Address

Neal S. Simon

2 Penn Plaza
New York, NY 10121


Signature

9. Dated the 8th day of October, 2003.

EXHIBIT B

